

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
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KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR  
  
NOËL T. ONO  
ASSISTANT DIRECTOR

February 26, 2015

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Committee  
on Judiciary and Labor  
The Senate  
State Capitol, Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members of the Committee:

SUBJECT: Senate Bill No. 1291, SD1 *and* SD2  
Relating to Medical Marijuana

The Department of Human Resources ("DHR"), City and County of Honolulu respectfully oppose SB 1291, SD1 *and* SD2. Both proposed drafts would prohibit employers from disciplining, suspending, discharging, or discriminating against employees (and, in the case of SD2, applicants) based on a positive marijuana test result if the employee (and/or applicant) used medical marijuana in accordance with the law, however, DHR respectfully submits that both proposed drafts would have unintended consequences for employers. DHR respectfully requests that this committee hold SB 1291 in conference.

While the intent of the measure seems reasonable at first glance, the proposed law fails to take into account the realities of the workplace and the role drug-testing plays in enhancing workplace safety. According to the DEA, marijuana is a mind-altering drug.<sup>1</sup> The short-term effects of marijuana include distorted perception, loss of coordination, and problems with memory, learning, and problem-solving.<sup>2</sup> Long-term use of marijuana is further associated with impairment of judgment, memory, and concentration.<sup>3</sup> To help in creating a safer work environment, employers must have a reliable and practical method for identifying employees whose work may be affected by the mind-altering effects of marijuana. This is particularly critical for our first responders

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<sup>1</sup> See U.S. Dept. of Justice Drug Enforcement Administration (DEA) Marijuana Drug Fact Sheet, *available* at [http://www.dea.gov/druginfo/drug\\_data\\_sheets/Marijuana.pdf](http://www.dea.gov/druginfo/drug_data_sheets/Marijuana.pdf)

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

and other employees who duties include safety-sensitive functions, where the effects may not be apparent until an employee is in a life or death, crisis situation. We have negotiated drug-testing programs, as well as drug-testing policies covering employees in safety-sensitive functions who are excluded from collective bargaining agreements. Both drug-testing programs include disciplinary and other actions triggered by positive tests, which we would like to be able to continue to enforce.

SD2's Part I, Section 1 subpart (2) and Section 2 subpart (e)(2)<sup>4</sup> restrict use of marijuana only "*in the workplace of the employee's employment.*" The bill does not clearly cover on-duty work outside of the workplace, for example, employees who are drivers.<sup>5</sup>

SD2's Section 1 subpart (3) and Section 2 subpart (e)(3)<sup>6</sup> enable employers to restrict employees from being "*under the influence of marijuana while working in the workplace.*"<sup>7</sup> Unfortunately, current urinalysis testing methods do not allow for a determination of whether employees are "under the influence," only whether cannabinoid metabolites are present in an individual's urine. To DHR's knowledge, there is currently no objective and approved laboratory test available which could reliably determine whether an employee is "under the influence" of marijuana. Public safety could be endangered if only employees who are proven to be "under the influence" of marijuana may be subject to personnel action. Even if supervisors receive training on the signs and symptoms of an employee being "under the influence," factors such as delayed reaction time and ability to make sound decisions in a crisis will not necessarily present themselves in an observable manner prior to the crisis—at which time it would be too late. This is why random testing and actions taken for positive test results remain valuable tools in enhancing the safety of the workplace.

Finally, DHR has concerns about enacting this proposed law via amendment to Hawaii's discrimination statute, Hawaii Revised Statutes Chapter 378. DHR does not believe it is appropriate to essentially create a new "protected class" of persons in employees who utilize medical marijuana. This bill would effectively elevate the protections offered to users of medical marijuana *above and beyond* those offered to users of any other prescriptive substance. DHR believes the practical effect of the new language, as written, would be to open employers up to potential discrimination claims *anytime* employment action against a qualified patient or primary caregiver is taken, even if the employment action were reasonable.

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4 In SD1, the reciprocal language is contained in Section 1 subpart (2) and Section 2 subpart (d)(2).

5 If this bill is *not* held in conference, DHR respectfully requests that such language be changed to "while on-duty OR in the workplace of the employee's employment."

6 In SD1, the reciprocal language is contained in Section 1 subpart (3) and Section 2 subpart (d)(3).

7 If this bill is *not* held in conference, DHR would again respectfully request that such language be changed to "while on-duty OR in the workplace of the employee's employment."

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Committee  
on Judiciary and Labor  
The Senate  
February 26, 2015  
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Based on the foregoing, we respectfully request that SB 1291 be held. In the event that this committee decides to pass SB 1291, DHR respectfully requests that first responders and other employees whose duties include safety-sensitive functions be specifically excluded. Furthermore, DHR respectfully requests that additional language be added to make clear that employers are allowed to take action if the employer has a reasonable belief that workplace safety is compromised (irrespective of whether a monetary or licensing-related benefit under federal law or regulation is at issue).

Thank you for the opportunity to testify on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Carolee C. Kubo". The signature is fluid and cursive, with a long, sweeping tail on the last letter.

Carolee C. Kubo  
Director

cc: Mayor's Office

POLICE DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

801 SOUTH BERETANIA STREET • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 529-3111 • INTERNET: [www.honolulupd.org](http://www.honolulupd.org)

KIRK CALDWELL  
MAYOR



LOUIS M. KEALOHA  
CHIEF

DAVE M. KAJIHIRO  
MARIE A. McCAULEY  
DEPUTY CHIEFS

OUR REFERENCE    **RN-JK**

February 26, 2015

The Honorable Gilbert S. C. Keith-Agaran, Chair  
and Members  
Committee on Judiciary and Labor  
State Senate  
Hawaii State Capitol, Room 016  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Members:

SUBJECT: Senate Bill No. 1291, S.D. 1, Relating to Medical Marijuana  
Senate Bill No. 1291, Proposed S.D. 2, Relating to Medical  
Marijuana

I am Ryan Nishibun, Captain of the Human Resources Division of the Honolulu Police Department (HPD), City and County of Honolulu.

The HPD opposes the passage of Senate Bill No. 1291, S.D. 1, and Proposed S.D. 2, Relating to Medical Marijuana. It would appear by the current language of the bill that if an employee had a medical marijuana card, he or she could be under the influence of marijuana at any time other than during work.

The HPD tests employees for the presence of marijuana but does not test to see if an employee is "under the influence" of marijuana. Unlike alcohol, marijuana has not been quantified to determine varying levels of impairment and can have impairing effects of up to 30 days. HPD officers and essential civilian employees are expected to report for duty when called upon, perform their duties, and make split-second decisions with a clear and conscious mind. Having marijuana in their system will negatively impact their judgment and performance and could jeopardize their safety as well as the safety of other employees and the public.

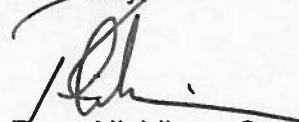
The Honorable Gilbert S. C. Keith-Agaran, Chair  
and Members  
February 26, 2015  
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The HPD and the unions recognize the serious adverse effects illegal drugs can have on the safety and performance of its employees and the potential impact to the public; and, therefore, agree that they will not tolerate their employees using illegal drugs on or off duty. Collective bargaining agreements and departmental policy prohibit the use and presence of any illegal substance.

The HPD urges you to oppose Senate Bill No. 1291, S.D. 1, and Proposed S.D. 2, Relating to Medical Marijuana.

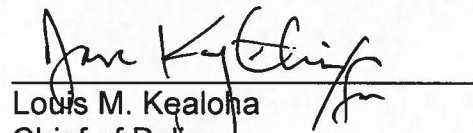
Thank you for the opportunity to testify.

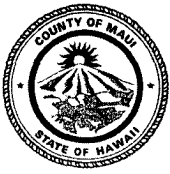
Sincerely,



Ryan Nishibun, Captain  
Human Resources Division

APPROVED:

  
Louis M. Kealoha  
Chief of Police



**ALAN M. ARAKAWA**  
MAYOR

OUR REFERENCE

YOUR REFERENCE

# **POLICE DEPARTMENT**

## **COUNTY OF MAUI**

**55 MAHALANI STREET**  
**WAILUKU, HAWAII 96793**  
**(808) 244-6400**  
**FAX (808) 244-6411**



**TIVOLI S. FAAUMU**  
CHIEF OF POLICE

**DEAN M. RICKARD**  
DEPUTY CHIEF OF POLICE

February 26, 2015

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Committee on Judiciary and Labor  
The Senate  
State Capitol  
Honolulu, HI 96813

RE: Senate Bill No. 1291 SD1, RELATING TO MARIJUANA

Dear Chair Keith-Agaran and Members of the Committee:

The Maui Police Department OPPOSES the passage of S.B. No. 1291 SD1.

This proposed bill prohibits an employer from disciplining, suspending, discharging, or discriminating against an employee who is a patient qualified to use medical marijuana solely because the employee tested positive for marijuana use. This bill also prohibits discrimination against medical marijuana patients and caregivers by schools, landlords, and courts with regard to medical care or parental rights.

The Maui Police Department believes that this bill will set a bad precedent in that it will make our workplaces a more dangerous place for everyone to work. As this may appear to protect medical marijuana patients, there still needs to be in place responsible protections for the majority of people in the workplace and for the community.

For law enforcement, this bill could hinder our current hiring procedures, not to mention, cause problems with discipline in the ranks if it was passed. An example of this could be a probationary police officer that may have passed the rigorous employment process to become a recruit, because if this bill became law we would not be able to stop him/her from being hired solely for the issue of medical marijuana use. Now let us say this recruit tested positive for marijuana during their probationary period and if this bill becomes law he/she could not be disciplined, suspended, discharged, or discriminated against. They could still be allowed to move through the probationary period and could become a police officer. I am sure that the community would not stand for future police officers that are under the influence of a substance like marijuana making life and death decisions. This is just one scenario that could occur.

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Committee on Judiciary  
February 25, 2015  
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For those reasons the Maui Police Department asks that you OPPOSE S.B. No. 1291  
SD1.

Thank you for the opportunity to testify.

Sincerely,

A handwritten signature in black ink, appearing to read "Tivoli S. Faaumu", followed by a long horizontal line extending to the right.

TIVOLI S. FAAUMU  
Chief of Police

## **Testimony before the Committee on Judiciary and Labor**

By Wanya Ogata, MPH  
Director, Corporate Health & Wellness  
Hawaiian Electric Company, Inc.

Thursday, February 26, 2015  
9:05 am, Conference Room 016

Senate Bill 1291, SD1 – Relating to Medical Marijuana

Chair Keith-Agaran, Vice-Chair Shimabukuro, and Members of the Committee:

My name is Wanya Ogata and I am testifying on behalf of Hawaiian Electric Company in strong opposition of SB 1291.

Hawaiian Electric Company is a drug free workplace and urges you to oppose SB 1291. Studies have shown that marijuana is a mind altering drug that contains more than 400 chemicals. One of those chemicals, THC, is believed to be the main cause of psychoactive effects as it travels from the bloodstream to the brain. According to the Drug Enforcement Agency, short term effects of marijuana also include distorted perception, loss of coordination, problems with memory, learning and problem solving.

The drug can pose dangers in the workplace and can increase the risk of injuries or accidents especially for employees who work in safety sensitive positions, as many Hawaiian Electric employees do. In addition, having marijuana in their system could also jeopardize the safety of other employees and the public. Thus, the passage of this bill could create administrative burden and legal actions against employers. For these reasons, medical marijuana has no place within the workplace and request that SB1291 be held in committee.

Thank you for time and consideration on this matter.





*Hawaii's Voice for Sensible, Compassionate, and Just Drug Policy*

**TO:** SENATE COMMITTEE ON JUDICIARY & LABOR

**FROM:** PAMELA LICHTY, M.P.H., PRESIDENT

**DATE:** FEBRUARY 26, 2015, 9:05 a.m., ROOM 016

**RE:** S.B. 1291, **S.D. 1** RELATING TO MEDICAL MARIJUANA – **IN QUALIFIED SUPPORT**

Good morning, Chair Keith-Agaran, Vice Chair Shimabukuro, and members of the Committee. My name is Pam Lichty and I'm President of the Drug Policy Action Group (DPAG), the government affairs arm of the Drug Policy Forum of Hawaii.

We support the intent of SB 1291, S.D. 1 which would emulate other states which prohibit an employer from firing an employee who is a registered medical marijuana patient user based solely on the results of a drug test. **However, we strongly prefer the more comprehensive protections enumerated in the proposed S.D.2 of this measure which is next on the agenda.**

Whether or not patient uses medical cannabis is between them and their physician, and it is not the business of the employer, assuming that their actual job performance meets expectations.

We urge the Committee to pass the far-sighted, proposed S.D. 2 of this measure on to the full Senate with a strong recommendation for passage. Mahalo for the opportunity to testify today.



**Testimony to the Senate Committee on Judiciary and Labor  
Thursday, February 26, 2015 at 9:05 A.M.  
Conference Room 016, State Capitol**

**RE: SENATE BILL 1291 SD1 RELATING TO MEDICAL MARIJUANA**

Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") **opposes** SB 1291 SD1, which prohibits an employer from disciplining, suspending, discharging, or discriminating against an employee who is a patient qualified to use medical marijuana solely because the employee tested positive for marijuana use.

The Chamber is the largest business organization in Hawaii, representing about 1,000 businesses. Approximately 80% of our members are small businesses with less than 20 employees. As the "Voice of Business" in Hawaii, the organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

The Chamber is opposed to SB 1291 SD1 as it may create an unsafe workplace environment for employees as well as clients. The bill ties the hands of employers in addressing the aforementioned issue and could create more administrative burden and legal actions against employers.

Thank you for the opportunity to testify.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDL Testimony](#)  
**Cc:**  
**Subject:** \*Submitted testimony for SB1291 on Feb 26, 2015 09:05AM\*  
**Date:** Tuesday, February 24, 2015 12:25:27 PM

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**SB1291**

Submitted on: 2/24/2015

Testimony for JDL on Feb 26, 2015 09:05AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:**  
**Subject:** Submitted testimony for SB1291 on Feb 26, 2015 09:05AM  
**Date:** Wednesday, February 25, 2015 4:45:13 PM

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**SB1291**

Submitted on: 2/25/2015

Testimony for JDL on Feb 26, 2015 09:05AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Marilyn Mick	Individual	Support	No

Comments: I understand that regarding SB1291 - Two versions SD1 and SD2 will be heard. SD1 Related to employee protections: I (SUPPORT IF) SB1291-SD2 passes. ---SD2 (I SUPPORT) Has all NEW text. It addresses the issues of primary care physician language and transportation.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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